

LAW OFFICE OF DONALD JOHNSTON
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Sherman, Texas 75090
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Attorney for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

**JOHN MICHAEL CHANEY
xxx-xx-5155**

**Address: 614 County Road
Windom, Texas 75492**

Debtor

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CASE NO. 18-42650

CHAPTER 7

**MOTION TO AVOID JUDICIAL LIEN OF
THE STATE OF TEXAS**

John Michael Chaney, Debtor herein (hereafter the “Movant”), files this Motion to Avoid Judicial Lien of the State of Texas (the “Motion”) as against his homestead, and as grounds therefor would respectfully show as follows.

1. In accordance with Local Rule of Bankruptcy Procedure 4003-1, all parties are afforded the following notice:

21-DAY NEGATIVE NOTICE – LBR 4003(c):

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this motion, you must file a written response in opposition to the motion, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion to Avoid Judicial Lien unless a written response in opposition to it is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE listed in the certificate of service unless

the Court shortens or extends the time for filing such response. If no response in opposition to the motion is timely served and filed, this motion shall be deemed to be unopposed, and the Court may enter an order sustaining the motion. If a response in opposition to the motion is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your response in opposition may be stricken. The Court reserves the right to set a hearing on any matter.

STATEMENT OF JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 157, which characterizes this matter as a core proceeding. This motion is brought pursuant to 11 U.S.C. § 522(f) and in accordance with Bankruptcy Rule 4003(d) and Local Rule of Bankruptcy Procedure 4003(e).

3. Venue is proper in this Court under 28 U.S.C. § 1408.

STATUS OF CASE

4. On November 28, 2018, Movant filed his voluntary petition in this Court under Chapter 7 of the Bankruptcy Code thereby commencing this bankruptcy case; Christopher Moser serves as the Chapter 7 trustee. Movant's § 341 meeting of creditors was held and concluded on December 21, 2018.

BASIS FOR RELIEF

5. Bankruptcy Code section 522(f)(1)(A) allows a debtor to avoid the fixing of a lien on an interest of the debtor in property to the extent such lien impairs an exemption to which the debtor is entitled if such lien is a judicial lien.

FACTS OF THIS CASE

6. The State of Texas (hereafter "Creditor") recovered a \$14,872.01 money judgment against Movant on or about June 29, 2018, in the 459th District Court, Travis County, Texas. Creditor subsequently recorded an abstract of its judgment pursuant to Chapter 52 of the Texas Property Code relating to judgment liens, with the County Clerk for Fannin County, which constitutes a lien on and attaches to any real property owned by Movant other than real property exempt from seizure or forced sale that is located in Fannin County. The abstract of judgment appears of record as Document Number 2018-4179 at volume 2059, page 366 of the Official Records for Fannin County. A copy of said abstract is attached to Movant's affidavit, which follows this motion.

7. Both when Creditor recorded its abstract of judgment and when Movant filed his petition in bankruptcy, Movant owned three tracts of real property in Fannin County. The three tracts are listed on his bankruptcy Schedule A/B: Property, filed with

the Bankruptcy Court. At all relevant times, Movant has used and claimed the three tracts as his rural homestead and he claimed them exempt under Texas law on his bankruptcy Schedule C – The Property You Claim as Exempt [Doc. #1, 11/28/2018]. The three tracts were listed as follows:

- a) Fannin CAD Property ID 70929; A0077 W Barker, Acres 1.0 (Movant's residence);
- b) Fannin CAD Property ID 70866; A0069 J Barnhart, Acres 19.8; and
- c) Fannin CAD Property ID 99546; A0077 W Barker, Acres 7.634

8. Creditor did not object to Movant's exemption claim and the exemption objection period has expired.

9. Though the abstract of judgment may not be enforceable against Movant's homestead, it is a cloud on title that impairs Movant's use and enjoyment of his homestead.

10. This motion is supported by the affidavit of John Michael Chaney, which follows this Motion and is incorporated herein by reference for all purposes.

RELIEF REQUESTED

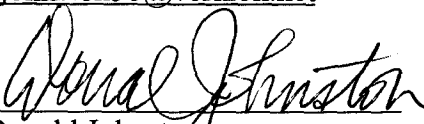
11. Creditor's abstract of its judgment recorded in the Official Records for Fannin County is a judicial lien within the purview of 11 U.S.C. § 522(f)(1)(A) and impairs Movant's homestead exemption within the meaning of 11 U.S.C. § 522(f).

12. Accordingly, Movant requests the Court to enter an Order that avoids Creditor's judgment lien as to Movant's three tracts of real property he claimed exempt as his homestead.

WHEREFORE, Movant requests the Court issue an order avoiding and cancelling Creditor's aforesaid lien on Movant's exempt property and grant such other and further relief, as the Court may deem just and proper.

Respectfully submitted,

Law Office of Donald Johnston
306 N. Travis St., Suite 102
Sherman, Texas 75090
(903) 891-9840 telephone
(903) 891-4051 fax (restricted)
djohnston50@verizon.net


Donald Johnston

State Bar No. 10834550
Attorney for Movant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that service complies with the LBRP 9013(f) in that the above foregoing document was served via electronic means, as listed on the Court's ECF noticing system or by regular first class mail pursuant to Federal and Local Bankruptcy Rules on this 04th day of March 2019 to the following:

Chapter 7 Trustee

Christopher Moser
2001 Bryan Street, Suite 1800
Dallas, Texas 75201

Debtor

John Michael Chaney
614 CR 3225
Windom, Texas 75492

U.S. Trustee

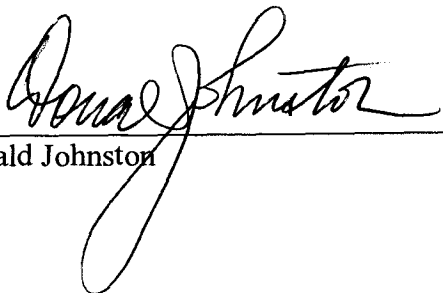
300 Plaza Tower
110 North College Avenue
Tyler, Texas 75702

Creditor – Abstract of Judgment

State of Texas
Office of the Attorney General
Bankruptcy and Collections Div.
P.O. Box 12548
Austin, Texas 78711-2548

Creditor - Judgment

State of Texas
Office of the Attorney General
Bankruptcy and Collections Div.
300 W. 15th St., 8th Floor
Austin, Texas 78701



Donald Johnston

**AFFIDAVIT OF FACT IN SUPPORT OF MOTION
TO AVOID JUDICIAL LIEN OF THE STATE OF TEXAS**

"My name is John Michael Chaney. I am the debtor in the Chapter 7 bankruptcy Case No. 18-42650 presently pending in the United States Bankruptcy Court for the Eastern District of Texas. I am personally familiar with the facts stated in the foregoing Motion to Avoid Judicial Lien of State of Texas and they are true and correct."

"I have read paragraphs 6 through 10 of the motion. The factual allegations made therein are within my personal knowledge and they are true and correct."

"Although I am single, I have a daughter. My residence is on the 1.0-acre tract and the 7.634-acre tract on which I have livestock is adjacent and contiguous to it. I use the 19.8-acre tract to pasture livestock also. These three tracts total less than 100 acres and are the only land I own."

"All three tracts are located outside of the extraterritorial jurisdiction of any municipality or a platted subdivision; and neither of them is served by a municipality or by an entity under contract to a municipality for any of the following services: electric, natural gas, sewer, storm sewer, or water."

"Attached hereto is a true copy of the State of Texas' abstract of judgment."

"After my bankruptcy is over, the State of Texas' abstract of judgment will still be indexed and recorded in the Official Records for Fannin County. Although it has been explained to me that the judicial lien imposed by the abstract of judgment would technically not be enforceable against my homestead, its mere existence could require further action by me to circumvent the automatic effect it has of placing a cloud on title against my homestead and cause me to incur unknown costs associated therewith. There is also the risk the judicial lien could be asserted in the future at an inopportune time. By obtaining an Order avoiding the judicial lien as to my homestead now, the Order should be dispositive and could be recorded in the Official Records for Fannin County to offset and nullify the abstract of judgment."

"I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct."

FURTHER AFFIANT SAYETH NAUGHT

Executed on Feb 28, 2019.


John Michael Chaney

Fannin County
Tammy Biggar Fannin County Clerk
101 E. Sam Rayburn Dr., #102
Bonham, Texas 75418



70 2018 00004179

Instrument Number: 2018-4179

As

Recorded On: July 23, 2018

State Tax Lien

Parties: THE STATE OF TEXAS

To CHANEY JOHN M AKA

Number of Pages: 3

Comment: ABSTRACT OF JUDGMENT

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

State Tax Lien	16.00
Total Recording:	16.00

***** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2018-4179

Receipt Number: 265256

Recorded Date/Time: July 23, 2018 04:18:02P

Book-Vol/Pg: BK-OR VL-2059 PG-366

User / Station: V Vandeventer - Cash Station #1

Record and Return To:

TW
FILE

ACWC176784429/TDMV/ma

2959 0k 2059 527

THE STATE OF TEXAS

COUNTY OF TRAVIS


ABSTRACT OF JUDGMENT

I, the undersigned, hereby certify that in a certain suit pending in the 459TH Judicial District Court, Travis County, Texas, Cause Number D-1-CN-18-000615, wherein THE STATE OF TEXAS is Plaintiff, and JOHN M. CHANEY, A/K/A JOHN MICHAEL CHANEY, A/K/A MICHAEL CHANEY is Defendant, on JUNE 29, 2018, Plaintiff the State of Texas recovered judgment against Defendant JOHN M. CHANEY, A/K/A JOHN MICHAEL CHANEY, A/K/A MICHAEL CHANEY, whose address appears as 614 County Road 3225, Windom, Fannin County, Texas 75492, for the sum of \$11,000.00 as civil penalties assessed by the Texas Department of Motor Vehicles, with interest on \$11,000.00 at the rate of 5% per annum from JUNE 29, 2018, until the judgment has been paid and fully satisfied, plus \$3,500.00 as attorney's fees. I further certify that the last three digits of Defendant JOHN M. CHANEY, A/K/A JOHN MICHAEL CHANEY, A/K/A MICHAEL CHANEY's driver's license number are 227 the last three digits of Defendant JOHN M. CHANEY, A/K/A JOHN MICHAEL CHANEY, A/K/A MICHAEL CHANEY's social security number are 155 and Defendant JOHN M. CHANEY, A/K/A JOHN MICHAEL CHANEY, A/K/A MICHAEL CHANEY's date of birth is November 24, 1963. The Plaintiff's address is: c/o Office of the Attorney General, Bankruptcy & Collections Division, 300 W. 15th Street, 8th Floor, Austin, Texas 78701.

Said judgment is entitled to the following credits: NONE. Said judgment is recorded in the Judgment Records of said Court.

There is still due on said judgment \$11,000.00, with interest on said amount at 5% per annum, in addition to \$3,500.00 in attorney fees and \$372.01 in court costs incurred.

I hereby verify, in accordance with § 52.002 of the Texas Property Code, that the foregoing is true and correct.

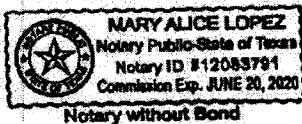

JOHN C. ADAMS
Assistant Attorney General
State Bar Number 00865800
Bankruptcy & Collections Division
P. O. Box 12548
Austin, Texas 78711-2548
Tel: 512/463-2173
Fax: 512/936-1409

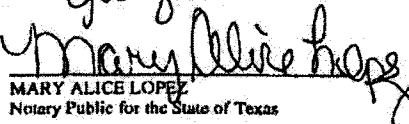
THE STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, Mary Alice Lopez, Notary Public for the State of Texas, on this day personally appeared JOHN C. ADAMS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 18th day of July, 2018.




MARY ALICE LOPEZ
Notary Public for the State of Texas

Doc 4179 Bk OR Vol 2059 Pg 328

Filed for Record in:
Fannin County
Honorable Tamm Bigger
County Clerk
On: Jul 23, 2018 at 04:18P

As a
State Tax Lien

Document Number: 4179

Amount 16.00

Receipt Number - 265256

By
Vickie Vandevanter, Deputy

ANY PROVISION HEREIN WHICH RESTRICTS THE
SALE, RENTAL, OR USE OF THE DESCRIBED
REAL PROPERTY BECAUSE OF COLOR OR RACE IS
INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

STATE OF TEXAS COUNTY OF FANNIN

I hereby certify that this instrument was
filed on the date and time stamped hereon by me
and was duly recorded in the volume and page
of the named records of Fannin County
as stamped hereon by me.

Jul 23, 2018

By: Vickie Vandevanter

Tamm Bigger, Fannin County Clerk
Fannin County